LAW REFORM
COMMISSION
OF
NOVA SCOTIA

TWENTY-FIFTH ANNUAL REPORT

April 1, 2015 to March 31, 2016

The Law Reform Commission of Nova Scotia was established in 1991 by the Government of Nova Scotia under an *Act to Establish an Independent Law Reform Commission.*

The Commissioners are:

Darlene Jamieson Q.C., President
Professor Robert J. Currie, Vice-President
Justice Kevin Coady
Dr. Brian R. Joseph (until November 2015)
Richard J. Melanson
Catherine D. A. Watson

The staff of the Commission are:

Angus Gibbon
Executive Director

Ilana Luther
Legal Research Counsel

William H. Charles, Q.C.
Special Counsel

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THE COMMISSION

The Law Reform Commission of Nova Scotia was created in 1991, pursuant to the *Law Reform Commission Act*. The Commission reviews Nova Scotia's laws and makes recommendations for their improvement, modernization and reform.

The Commission is independent of the Government. It reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia.

In 2015-2016 the Commission received operational funding from the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to law reform, legal education, and the administration of justice, receives its funds from the interest on lawyers' trust accounts. The Government of Nova Scotia also provided office premises.

Pursuant to the *Law Reform Commission Act*, the Commissioners are appointed from different sectors of the community, including: (a) a judge of a court of the Province; (b) two members of the Nova Scotia Barristers' Society; (c) a member of the faculty of the Schulich School of Law, Dalhousie University; and (d) up to three other persons appointed by the provincial government. At least one of the Commissioners must not be a graduate in law. Commissioners generally serve without remuneration of any kind.

In 2015-2016 the Commission employed a staff of three: the Executive Director, Legal Research Counsel, and a Financial Administrator. As well, the Commission benefits from the continuing contribution of its founding President, Professor William H. Charles, Q.C., as Special Counsel to the Commission. Professor Charles has provided valuable assistance with all Commission projects during the past year.

The Commission's work is supported by volunteer effort from legal practitioners, experts and stakeholders who offer advice and expertise on Commission projects. For each project the Commission convenes one or more advisory groups to guide the Commission's research and to examine options for reform. The time and effort given by these advisory group members is considerable, and the Commission could not do its work without them.

The Commission's work has resulted in substantial new law and improvements to the administration of justice in diverse areas of law, including family law, estate planning and administration, environment law, construction law, and court processes. The Commission's track record includes the following:

> **Enforcement of Maintenance Obligations** (November 1992) - Resulted in the creation of Nova Scotia's maintenance enforcement program under the *Maintenance Enforcement Act*, 1994.

Reform of the Jury System (June 1994) - Resulted in the *Juries Act*, 1998.

From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia (1995) - Recommended administrative reforms. In response the Province trained 2000 people in appropriate response to domestic violence, and instituted a domestic violence monitoring committee.

Legal Status of the Child Born Outside Marriage (March 1995) - Resulted in the elimination of discrimination against 'illegitimate children" in the *Intestate Succession Act* in 1999.

Adult Guardianship and Personal Health Care Decisions (November 1995) - Provided background for the *Personal Directives Act* in 2008. The Department of Justice is currently examining reforms to the *Incompetent Persons Act*.

Probate Reform (March 1999) - Resulted in a new *Probate Act* in 2000.

Builders' Liens (June 2003) - Resulted in the overhaul of the outdated *Mechanics' Lien Act* in 2004, to improve the lien system for construction industry stakeholders.

Wills Act (November 2003) - Resulted in significant amendments to the *Wills Act* in 2006.

Vexatious Litigants (April 2006) - Resulted in amendments to the *Judicature Act* in 2009, to deal with litigants who improperly strain the time and resources of the courts.

Grandparent-Grandchild Access (May 2007) - Resulted in recognition of grandparents' rights to apply for access with leave of the court in 2012, and the inclusion of 'best interests of the child' factors in the *Maintenance & Custody Act* in 2013.

Contaminated Sites (December 2009) - Provided background for the *Contaminated Sites Regulations* under the *Environment Act*, to promote redevelopment of derelict brownfields.

The Rule Against Perpetuities (December 2010) - Resulted in the abolition of an antiquated but troublesome rule of law by the *Perpetuities Act*, 2011.

Builders' Liens (March 2013) - Resulted in amendments to the *Builders' Lien Act* in 2013, to improve the process for paying out lien holdbacks in the construction industry.

The Commission was also on the Steering Committee for the Nova Scotia **Civil Procedure Rules,** providing extensive research and logistical coordination for that multi-year effort to make the rules of Nova Scotia's courts as accessible and fair as they can be.

THE YEAR IN REVIEW 2015 - 2016

Work Program and Publications

Powers of Attorney Act

In August 2015 the Commission published its Final Report on the *Powers of Attorney Act*. The Commission undertook this project in response to a request from the Minister of Justice. The *Act* is significantly out of date, and its deficiencies have propelled recent litigation and piecemeal reform legislation. The legislation in other Canadian jurisdictions is far more modern and expansive, particularly with regard to the duties of the attorney and the protection of the donor. The project offered an opportunity to strengthen Nova Scotia's laws for the protection of seniors, and others who rely on substitute decision-makers, against financial abuse and exploitation.

The Report makes 178 proposals for legislative reform, as well as for significant public legal education programs to increase public knowledge of the benefits and risks of making a power of attorney, access to justice initiatives to prevent and respond to financial abuse using a power of attorney, and more effective enforcement by public authorities.

Access to justice is a priority in the report. The legislative recommendations are generally aimed at ensuring that the donor-attorney relationship is more transparent and accountable from the outset. This is so that it will not be left to the donor, or the donor's family, to bear the burden and expense of court proceedings to bring the attorney to account, once suspicions of financial abuse arise.

Matrimonial Property Act

In April of 2012, the Commission decided to review the Nova Scotia *Matrimonial Property Act*. It has been more than 30 years since the *Act* came into force, and it has not been substantially amended since then. Family law stakeholders have said that the *Act* is in need of reform in a number of areas. The *Act* affects a large number of Nova Scotians - family law litigation representing a substantial proportion of contested matters in Nova Scotia courts. A number of other jurisdictions have significantly strengthened their matrimonial property legislation in recent years.

The Commission convened an advisory group, consisting of members of the legal profession with experience in family law, a faculty member from the Schulich School of Law at Dalhousie University, a justice of the Nova Scotia Supreme Court (Family Division), and a chartered accountant who specializes in matrimonial property division. The group met through the Winter and Spring of 2014, working through issues identified in an extensive issues paper prepared by Commission staff.

The Commission convened a separate advisory group of estate planning and family law

practitioners and faculty members from the Schulich School of Law to advise on issues that arise when family property is divided after the death of a spouse. The estates and succession advisory group met through the early winter of 2015.

Throughout the 2015-2016 reporting period the Commission prepared its preliminary proposals for reform, based on the advice of the advisory groups and the Commission's own research and public consultation. The proposals will be published in a Discussion Paper, which was near completion by the end of the reporting period. The paper will address critical family law issues, including whether common law spouses should have access to the *Act*'s regime for property division, how to make matrimonial property disputes more certain and predictable to limit the need for court proceedings, whether the *Act* should continue to include assets owned by either spouse prior to the marriage in a division, how pensions should be divided, and many others.

The Discussion Paper will be published in the late spring 2016. It will be accompanied by a user-friendly survey intended for a general audience, available online and in print. The Commission will consult with Nova Scotians through the summer of 2016 and then prepare its final report.

Intestate Succession Act

In December 2013 the Commission decided to review the *Intestate Succession Act*. The *Act* governs the distribution of property of a deceased person who has not made a valid will, as well as any property which is not dealt with by a will. The *Act* has significant access to justice implications because it determines how surviving family members will inherit from the estate of a deceased person who has not made a will. The *Act* provides for a preferential share of the estate for the deceased's spouse, and the remainder to be divided between the spouse and other descendants of the deceased.

The *Act* was first introduced in 1966, when the monetary value of property was much lower, and ideas about inheritance focused more on inter-generational wealth transfers, as opposed to the material well-being of surviving spouses or common law partners. The *Act* was written at a time when multiple marriages and cohabitations, same sex marriages and cohabitations, "blended families" and artificially conceived children were less prevalent than they are today.

Among other things, the Commission is examining whether the *Act* should include common law partners as spouses, and if so in what circumstances. The spouse's preferential share is also being reviewed. It is currently $50,000 (or the spouse may elect to receive the deceased's primary residence) but that figure has not been adjusted since 1975.

The Commission is also looking at the question of who should be considered an "issue" of the deceased, entitled to a share of the estate. Currently step-children who were not adopted by the deceased are not included, nor are children to whom the deceased stood *in loco parentis*. As well, the *Act* does not deal with various other biological and social relationships of parentage that may be formed by the use of reproductive technologies.

During the reporting period Commission staff drafted an extensive issues paper, setting out comparative legal and sociological research and identifying the major issues for reform. The issues paper will provide the background for the deliberations of the Commission's advisory group, which has yet to be convened.

Finances & Administration

The Commission's financial statements are appear at the end of this report. During the reporting period, the Commission received operational funding in the amount of $96,070 from the Law Foundation of Nova Scotia, and $184,824 from the Government of Nova Scotia. The Commission's total revenue was $288,958. The Commission's total expenses were $280,126, leaving surplus operating funds of $8,832. The Commission carried forward savings from prior years of $57,959.

In October of 2015 the Commission hosted delegates from the other Canadian law reform agencies for a conference, under the aegis of the Federation of Law Reform Agencies of Canada (FOLRAC). The FOLRAC conference was held at the Weldon Law Building on the Dalhousie University campus. Delegates discussed a variety of law reform issues, including new methods of public participation and consultation, evaluation of law reform projects, and reform of family laws. Improving access to justice was the general theme and goal of the sessions. The conference was capped off by a dinner at the Maritime Museum of the Atlantic in Halifax. The keynote, on access to justice and law reform, was given by The Honourable Thomas Cromwell, Justice of the Supreme Court of Canada and a former Nova Scotia Law Reform Commissioner. The conference and gala were sponsored by the Federation of Law Reform Agencies of Canada (FOLRAC), McInnes Cooper and Merrick Jamieson Sterns Washington & Mahody.

COMMISSIONERS AND STAFF 2015-2016

Commissioners

Darlene Jamieson, Q.C.
President
Darlene Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She was appointed as President of the Commission in June of 2012. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998, with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

Robert J. Currie
Vice-President
Professor Robert Currie was appointed to the Commission by Order in Council in January 2010.

He is an Associate Professor at the Schulich School of Law, Dalhousie University, and Director of Dalhousie's Law & Technology Institute. He is a specialist in the area of international and transnational criminal law, and is the author of numerous books, articles and comments in that field. In 2008, Professor Currie was awarded the Dalhousie Law Students' Society and Alumni Association Award for Excellence in Teaching. He has been a member of the Nova Scotia Bar since 2000.

Kevin Coady

The Honourable Justice Kevin Coady was appointed to the Commission by Order in Council in December 2007. Mr. Justice Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with the law firm Coady Filliter and has taught criminal law at Dalhousie University.

Brian R. Joseph (until November 2015)

Dr. Brian Joseph was appointed to the Commission by Order in Council in April 2010. He is a graduate of St. Francis Xavier University (B.Sc. and B.A. Hons), the University of Toronto (M.A.), and Harvard University (A.M. and Ph.D). Dr. Joseph has taught at Dalhousie, Saint Mary's, St. Francis Xavier, and Cape Breton universities. He has served in the Nova Scotia Attorney General's Department and the Privy Council Office, Government of Canada.

Richard J. Melanson

Richard Melanson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in September of 2012. He is a partner with the Halifax law firm of Blois, Nickerson & Bryson LLP. His areas of practice include administrative law, bankruptcy and insolvency, civil litigation, corporate & commercial, intellectual property and real estate. Mr. Melanson graduated from the Université Sainte-Anne with a Bachelor of Arts (Honours) in 1981, and a Bachelor of Education (Honours) in 1983. In 1988 he graduated from Dalhousie Law School as Gold Medalist. He is a member of the Board of Examiners of Nova Scotia Social Workers' Association and chair of the Discipline Committee, and was a member of the Agreement on Internal Trade Working Group. He is a Director and current Treasurer of Canadian Parents for French - Nova Scotia.

Catherine D.A. Watson

Catherine Watson was appointed to the Commission by Order in Council in February 2015. She is a Partner in McInnes Cooper's Halifax office and leader of the firm's regional estates and trusts service group. She is a regular speaker on the subjects of estate trust and tax planning to various professional organizations and the public, and a frequent author of articles on these subjects in various newspapers and newsletters. She has been an instructor at the Ontario Bar Admissions course in the area of estate planning. Ms. Watson has been recognized by Best Lawyers in Canada and is listed in the Canadian Legal Lexpert Directory. She is the Past President and a current member of the Halifax Estate Planning Council and is a member of the Society of Trust and Estates Practitioners, the Canadian Bar Association, the Nova Scotia Barristers' Society and the International Bar Association. She is Past Chair of the Wills & Estates

Section of the Canadian Bar Association – Nova Scotia and is the Co-Founder and Past Chair of the Pride Business Network in Toronto, Ontario.

Staff

Angus Gibbon

Executive Director

Angus Gibbon joined the Commission as Legal Research Counsel in August 2009, and was appointed Executive Director in April of 2011. A graduate of Acadia University, he received his law degree from the University of Toronto in 1999, followed by a Ph.D. from the University of Toronto in 2005. Mr. Gibbon was called to the Nova Scotia Bar in 2004 and was in private practice before joining the Commission. He has served on the part-time faculty of the Schulich School of Law at Dalhousie University, teaching Comparative Constitutional Law and coaching the Laskin Moot team. He is currently a member of the Nova Scotia Barristers' Society Code of Conduct Committee.

Ilana Luther

Legal Research Counsel

Ilana Luther joined the Commission in June 2011. After receiving her Bachelor of Arts from Carleton University, she received a Master of Arts in Political Science from York University. In 2004, Ms. Luther received her law degree from Osgoode Hall Law School, followed by a Master of Laws from Harvard Law School. In 2015 she received a Ph.D. from the Schulich School of Law at Dalhousie University. She has worked for legal aid both in Ontario and in Nova Scotia.

William H. Charles, Q.C.

Special Counsel

Professor William Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

FINANCES FOR 2015-2016

Revenue:	Year End 31 Mar 2015	Budget 2015-2016	**Year End 31 Mar 2016**
Department of Justice	184,824	184,824	**184,824**
Law Foundation of Nova Scotia	106,744	96,070	**96,070**
Conference Sponsorship	0	6,000	**7,000**
Interest	1,274	1,000	**1,064**
Total Revenue:	292,842	287,894	**288,958**
Expenses:			
Personnel	249,191	231,535	**237,812**
Advertising	50	0	**0**
Commissioners Expenses	8,131	8,200	**3,360**
Meeting Costs	843	1,200	**646**
Library	2,294	2,500	**2,237**
Accounting Fees	2,904	3,000	**2,859**
Membership/Professional Fees	1,447	1,500	**1,249**
Information Technology	2,421	2,000	**0**
Internet Expense	1,890	8,500	**2,143**
Staff Expenses	2,005	2,500	**675**
Rent/Parking	14,495	5,402	**4,243**
Rental Equipment	2,128	1,950	**1,910**
Insurance	1,203	1,245	**1,245**
Office Supplies	1,073	1,200	**626**
Photocopying/Printing	3,206	3,000	**2,454**
Postage & Courier	1,260	1,500	**1,448**
Telephone	2,165	2,000	**1,999**
Travel, Conferences	176	1,000	**67**
Federation of Law Reform Agencies conference	0	12,600	**12,421**
Professional Development	0	0	**0**
Office Equipment Maintenance	0	225	**0**
Bank Service Charges	310	120	**161**
Miscellaneous	0	0	**0**
HST Paid on Purchase	3,044	3,650	**2,571**
GST Paid on Purchases	5	25	**0**
Contract Research	0	0	**0**
Moving expense	2,005	0	**0**
Total Expenses	302,246	294,852	**280,126**
Net Income	(9,404)	(6,958)	**8,832**

Note: accumulated surplus (31 Mar 2015): 57,959

STATEMENT OF FINANCIAL POSITION

March 31	2016	2015
ASSETS		
Current		
Cash and cash equivalents	$ 72,565	$ 60,647
Accounts receivable	1,773	-
Prepaid expenses	538	538
HST receivable	2,536	3,020
	$ 77,412	$ 64,205
LIABILITIES		
Current		
Payables and accruals (Note 3)	$ 10,621	$ 6,246
NET ASSETS		
Accumulated surplus	66,791	57,959
	$ 77,412	$ 64,205